

## **GUARANTEE**

**THIS GUARANTEE** is made at Islamabad as of the \_\_\_\_ day of December 2008 by and between:

- (1) **THE PRESIDENT OF THE ISLAMIC REPUBLIC OF PAKISTAN** for and on behalf of **THE ISLAMIC REPUBLIC OF PAKISTAN** (the “Guarantor”); and
- (2) **Cavalier Energy Corporation**, a public limited company incorporated under the laws of Pakistan, whose principal place of business is located at Plot 101-103, Industrial Estate, Sihala Road, Islamabad, Pakistan (the “Company”).

## **RECITALS**

- (A) **WHEREAS**, the Guarantor and the Company have entered into an Implementation Agreement on the \_\_\_\_ day of December 2008 (the “Implementation Agreement”);
- (B) **WHEREAS**, the Power Purchaser has entered into a Power Purchase Agreement with the Company on the \_\_\_\_ day of December 2008 (the “Power Purchase Agreement”); and
- (C) **WHEREAS**, in accordance with Article XVII of the Implementation Agreement, the Guarantor has agreed to enter into this Guarantee of the payment obligations of the Power Purchaser under the Power Purchase Agreement.

**NOW IT IS HEREBY AGREED** as follows:

### **1. GUARANTEE**

#### **1.1 Guarantee**

In consideration of the Company entering into the Power Purchase Agreement with the Power Purchaser, the Guarantor hereby irrevocably and unconditionally guarantees and promises to pay the Company any and every sum of money the Power Purchaser is obligated to pay to the Company under or pursuant to the Power Purchase Agreement that the Power Purchaser has failed to pay when due in accordance with the terms of the Power Purchase Agreement, which obligation of the GOP shall include monetary damages arising out of any failure by the Power Purchaser to perform its obligations under the Power

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Purchase Agreement to the extent that any failure to perform such obligations gives rise to monetary damages.

1.2 Waiver of Defences

The obligations of the Guarantor under this Guarantee shall be absolute and unconditional and shall remain in full force and effect until all the covenants, terms, and agreements set forth in the Power Purchase Agreement shall have been completely discharged and performed, unless waived by the Company in writing. The obligations of the Guarantor shall not be modified or impaired upon (and the Guarantor waives any defence to the performance of such obligations based upon) the happening from time to time of any event, including the following:

- 1.2.1 the extension of time for payment of any amounts due or of time for performance of any of the covenants, terms, or agreements of the Power Purchaser set forth in the Power Purchase Agreement;
- 1.2.2 subject to Section 18.3 of the Implementation Agreement, amendments to the Power Purchase Agreement;
- 1.2.3 the failure, omission, or delay by the Company to enforce, ascertain, or exercise any right, power, or remedy under or pursuant to the terms of the Power Purchase Agreement or this Guarantee;
- 1.2.4 the bankruptcy, insolvency, or other failure or financial disability of the Power Purchaser or the Company;
- 1.2.5 the addition, or partial or entire release of any guarantor, maker, or other party (including the Power Purchaser) primarily or secondarily responsible for the performance of any of the covenants, terms, or agreements set forth in the Power Purchase Agreement or by any extension, waiver, amendment, grant of time, indulgence, or thing or circumstance whatsoever in law or in equity that may release or create a defence or discharge for a guarantor (other than complete performance in accordance with the terms of the Power Purchase Agreement);
- 1.2.6 any failure of the Power Purchaser to comply with the requirements of any law, regulation or order;

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- 1.2.7 the dissolution, privatisation, reorganization or any other legal alteration of the legal structure of the Power Purchaser
- 1.2.8 any assignment as security, pursuant to Section 11.2(a) of the Implementation Agreement, of the Power Purchase Agreement by the Company; and
- 1.2.9 the invalidity or unenforceability of the Power Purchase Agreement or any of its terms, conditions or provisions, caused solely by the GOP or the Power Purchaser.

1.3 Continuing Guarantee

This Guarantee shall be a continuing security and, accordingly, shall extend to cover the balance due to the Company at any time from the Power Purchaser under the Power Purchase Agreement. No demand made by the Company hereunder shall prejudice or restrict the right of the Company to make further or other demands.

1.4 Additional Security

- 1.4.1 This Guarantee shall be in addition to, and not in substitution for or derogation of, any other security that the Company may at any time hold in respect of the obligations of the Power Purchaser under the Power Purchase Agreement.
- 1.4.2 The Company may enforce this Guarantee notwithstanding that it may hold any other guarantee, Lien, or security of or for the obligations of the Power Purchaser under the Power Purchase Agreement or have available to it any other remedy at law or equity.

1.5 Preliminary Demand

- 1.5.1 Notwithstanding that this Guarantee is the unconditional obligation of the Guarantor, before taking steps to enforce this Guarantee and demand payment from the Guarantor, the Company agrees to notify the Guarantor of the non-payment by the Power Purchaser and make demand in writing for payment from the Power Purchaser. After thirty (30) days from the date notice of such non-payment was delivered to the Guarantor, the Company may notify the Guarantor in writing that payment from the Power Purchaser, continues to be past due, and make a demand for payment from the Guarantor under this Guarantee, and the Guarantor shall make payment within ten (10) Business Days following such demand for payment.

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Late payments hereunder shall bear mark-up at an annual rate equal to the Delayed Payment Rate.

1.5.2 Except as provided in Section 1.5.1, the Company shall not be obliged before taking steps to enforce this Guarantee, to exercise any other remedies that may be available to it under or in respect of the Power Purchase Agreement, or to initiate any proceedings or obtain judgment against the Power Purchaser thereon.

1.6 Certification

Any demand for payment made pursuant to this Guarantee shall be made in person by a duly authorized officer of the Company at the Guarantor's offices at House # 50, Nazimuddin Road, F-7/4, Islamabad, and shall be accompanied by a certificate signed by a duly authorized officer of the Company, stating that:

"We hereby certify that (A) Cavalier Energy Corporation (the "**Company**") is making this demand on the Government of the Islamic Republic of Pakistan (the "Guarantor") in the amount of Rupees [insert amount] in accordance with Section 1 of the Guarantee dated \_\_\_ December 2008, by and between the Guarantor and the Company; (B) the amount specified hereinabove is due and payable by the Power Purchaser under the Power Purchase Agreement between the Company and the Power Purchaser; (C) demand in writing for payment from the Power Purchaser was delivered to the Power Purchaser on or after the date payment was due and notice of such non-payment was delivered to the Guarantor not less than thirty (30) days prior to the date hereof; and (D) such amount, on the date hereof, remains unpaid by the Power Purchaser."

1.7 Subordination

Any right that the Guarantor may at any time have to be indemnified by the Power Purchaser in respect of sums paid out by the Guarantor in performance of this Guarantee, shall be subordinated to the rights of the Company to recover from the Power Purchaser in full all sums that are then due from the Power Purchaser under the Power Purchase

Agreement.

1.8 No Set-off

No set-off, counterclaim, reduction, or diminution of any obligation that the Guarantor has or may have against the Company, nor any right of subrogation that the Guarantor has or may have against the Company, shall be available to the Guarantor against the Company in connection with any obligation of the Guarantor to the Company under this Guarantee.

1.9 Arbitration; Jurisdiction

1.9.1 Arbitration

The Parties irrevocably agree that any dispute or difference arising under, out of, in connection with, or relating to, this Guarantee, including, without limitation, any dispute or difference concerning the existence, validity, or enforceability of this Guarantee or any provisions hereof or as to whether this Guarantee or any provisions hereof are invalid, illegal, or unenforceable (each a “**Dispute**”) shall be resolved in accordance with the provisions of Section 16.3 of the Implementation Agreement, which provisions are, mutatis mutandis, incorporated herein by reference. Each Party hereby consents to the jurisdiction of any courts of competent jurisdiction (including the courts of England) for any action filed by the other Party under this Guarantee, to enforce any award or final decision of any tribunal duly appointed under this Guarantee to resolve any Dispute hereunder between the Parties.

1.9.2 Commercial Acts

The Guarantor unconditionally and irrevocably agrees that the execution, delivery and performance by it of this Guarantee constitute private and commercial acts.

1.9.3 Sovereign Immunity; Jurisdiction

- (a) The Guarantor irrevocably and unconditionally:

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- (i) agrees that should any proceedings be brought against it or its assets, other than its aircraft, naval vessels and other defence related assets or assets protected by the diplomatic and consular privileges under the Laws of Pakistan (the “**Protected Assets**”), no claim of immunity from such proceedings will be claimed by or on behalf of the Guarantor, on behalf of itself or any of its assets (other than the Protected Assets) that it now has or may in the future have in any such jurisdiction in connection with any such proceedings;
  - (ii) waives any right of immunity which it or any of its assets (other than the Protected Assets) now has or may in the future have in connection with any such proceedings; and
  - (iii) consents generally to the jurisdiction of any court of competent jurisdiction (including the courts of England) for any action or proceeding filed by the Company under this Guarantee to resolve any dispute between the Parties hereunder or to enforce any award or decision of any tribunal which was duly appointed under this Guarantee to resolve any Dispute between the Parties (including, without limitation, the making, enforcement or execution against or in respect of any assets of the Guarantor whatsoever (other than the Protected Assets)) regardless of its or their use or intended use, and specifically waives any objection that any such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same. The Guarantor agrees that service of process in any such action or proceeding may be effected in any manner permitted by the law applicable to the aforementioned court.
- (b) The Company hereby waives any and all rights it may have to enforce any judgment claim against the Protected Assets in the courts of any jurisdiction.

## **2. UNDERTAKING**

### **2.1 Duration**

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This Guarantee shall remain in full force and effect from and after the date hereof until the termination of the initial term of the Power Purchase Agreement, and for so long thereafter as any amount owed to the Company by the Guarantor or Power Purchaser in relation to such initial term is or may be outstanding.

2.2 Tax

In addition to any amount then due and payable to the Company by the Power Purchaser under the Power Purchase Agreement and payable by the Guarantor under the terms of this Guarantee, the Guarantor shall be liable for any duty, impost, levy, charge, fee, or tax of whatsoever nature (“**Tax**”) levied or imposed by a Federal Entity or any political subdivision or authority thereof on or with regard to any payment hereunder, unless the payment, if made by the Power Purchaser would itself have caused the Company to become liable for the Tax. If, under the applicable law the Guarantor is unable to pay the Tax and the Company is required to pay the Tax, the amount to be paid to the Company hereunder shall be increased by an amount sufficient so that such payment, net of the Tax, would equal the payment the Company would have received from the Power Purchaser, net of any Taxes applicable to payment from the Power Purchaser to the Company.

**3. NO WAIVER; REMEDIES CUMULATIVE**

3.1 No Waiver

No failure or delay by the Company to exercise any right or remedy under this Guarantee shall constitute a waiver of such right or remedy. No single or partial exercise of any right or remedy shall preclude any other or further exercise thereof, or the exercise of any other right or remedy. No waiver by the Company shall be effective unless it is in writing.

3.2 Remedies Cumulative

The rights and remedies of the Company provided by this Guarantee are cumulative and not exclusive of any rights or remedies provided by law.

**4. NOTICES**

4.1 Address for Notices

All notices or other communications to be given or made hereunder shall be in writing, shall

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be addressed for the attention of the person indicated below and shall be delivered personally or sent by registered or certified mail or facsimile. All notices shall be deemed delivered (a) when presented personally, (b) if received on a business day of the receiving Party, when transmitted by facsimile to the receiving Party's facsimile number specified above and, if received on a day that is not a business day of the receiving Party, on the first business day of the receiving Party following the date transmitted by facsimile to the receiving Party's facsimile number specified above, (c) one (1) day after being delivered to a courier for overnight delivery, addressed to the receiving Party, at the address indicated below (or such other address as such Party may have specified by notice delivered to the delivering Party at its address or facsimile number specified below), or (d) five (5) days after being deposited in a regularly maintained receptacle for the postal service in Pakistan, postage prepaid, registered or certified, return receipt requested, addressed to the receiving Party, at the address indicated below (or such other address as the receiving Party may have specified by written notice delivered to the delivering Party at its address or facsimile number specified below). Any notice given by facsimile shall be confirmed in writing delivered personally or sent by registered or certified mail, but the failure to so confirm shall not void or invalidate the original notice if it is in fact received by the Party to which it is addressed. The address for service of each Party and its respective facsimile number shall be:

4.1.1 For the Guarantor: Private Power & Infrastructure Board

Attention: Managing Director

Address: 50, Nazimuddin Road, F-7/4,

Islamabad, Pakistan.

Facsimile: (051) 921-5723

4.1.2 For the Company: Cavalier Energy Corporation

Attention: Chief Executive Officer

Address: Plot 101-103, Industrial Estate,

Sihala Road

Islamabad, Pakistan

Facsimile: +92 51- 449-0873



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or such other addresses or facsimile numbers as either Party may have notified to the other Party in accordance with this Section 4.1. Notwithstanding the foregoing, if the address of the Lender or Agent is outside Pakistan, any notice delivered to the Lender or Agent pursuant to Section 14.4 shall be sent by international courier or facsimile, and if sent by facsimile confirmed by international courier.

**5. ASSIGNMENT**

5.1 Assignment by the Guarantor

The Guarantor shall not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Company.

5.2 Assignment by the Company

The Company shall not assign or transfer all or any part of its rights or obligations hereunder without the prior written consent of the Guarantor. Notwithstanding the provision of the immediately preceding sentence, for the purpose of construction or permanent financing of the Complex, the Company may assign or create a security interest over its rights and interests in and to this Guarantee in favour of the Lenders.

5.3 Successors

This Guarantee shall be binding upon and inure to the benefit of the Guarantor and the Company and the respective successors and permitted assigns of each.

**6. GOVERNING LAW**

The rights and obligations of the Parties under or pursuant to this Guarantee shall be governed by and construed according to the laws of Pakistan.

**7. MISCELLANEOUS**

7.1 Severability

If one (1) or more provisions contained in this Guarantee is held or found to be invalid, illegal, or unenforceable in any respect, the provision(s) shall be given effect to the extent permitted by law, and the invalidity, illegality, or unenforceability of any provision shall not

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affect the validity of the remaining provisions of this Guarantee.

7.2 Definitions

Capitalized terms used but not defined in this Guarantee, shall have the meanings ascribed thereto in the Implementation Agreement.

**IN WITNESS WHEREOF**, this Guarantee has been executed on the day first hereinabove written.

For and on behalf of  
**THE PRESIDENT OF THE ISLAMIC  
REPUBLIC OF PAKISTAN**

For and on behalf of  
**THE ISLAMIC REPUBLIC OF PAKISTAN**

By: \_\_\_\_\_

Title: Managing Director, PPIB

By: \_\_\_\_\_

Title: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_